



Delegated Report

Planning Application

Planning Application No: 20240144

Location: 157 Milton Road Gravesend Kent

Description: Conversion of the upper floors of the property from a vacant restaurant with ancillary accommodation to 1x1 bed flats and 3x2 bed flats.

Applicant: Mr Singh

Site Visit Date: 23/02/2024 and previous applications refs 20230268 & 20231004

Submitted Documents/Plans

Covering Letter;
Application form;
Drawing no. 001 Rev. A – Existing and Proposed Block Plans, Location Plan;
Drawing no. 002 Rev. B – Existing Plans;
Drawing no. 003 Rev. B – Existing Elevations;
Drawing no. 004 Rev. C – Proposed Plans;
Drawing no. 005 Rev. B – Proposed Elevations;
Noise Assessment Version 1 by Inacoustic;
Air Quality Assessment Report Ref. P7022-R1-V1 – Air Quality Assessment by Noise Air Acoustics & Air Quality; and
Heritage Statement by Heritage Unlimited.

Superseded

~~Drawing no. 002 Rev. A – Existing Plans and Elevations;~~
~~Drawing no. 003 Rev. A – Existing Elevations;~~
~~Drawing no. 004 Rev. A – Proposed Plans and Elevations;~~
~~Drawing no. 005 Rev. A – Proposed Elevations;~~
~~Drawing no. 006 Rev. A – Secondary glazing detail;~~
~~Drawing no. 007 Rev. A – MVHR Detail;~~

Drawing nos. 002, 003, 004 and 005 superseded as revised versions of the drawings were received to amend some errors on the drawings concerning fenestration and also to show sufficient bin storage. Drawing nos. 006 and 007 were removed from the application due to being unacceptable and so could not form part of the approved drawings; conditions to be attached to obtain correct detail.

Relevant Planning History

Reference	Description	Decision	Decision Date
20231004	Conversion of the property from a vacant restaurant to 3x1 bed flats and 3 studio flats.	Refused	05.12.2023
20230269	Application for Listed Building Consent for the	Refused	06.06.2023

	conversion of the property from a vacant restaurant to 6x1 bed flats.		
20230268	Conversion of the property from a vacant restaurant to 6x1 bed flats.	Refused	06.06.2023
19900146	Application for Listed Building Consent for the reconstruction of the balcony at first floor level on the front elevation	Permitted	04.05.1990
19920051	Erection of an external extraction duct on the rear elevation of No. 158 Milton Road.	Permitted	03.04.1992

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS05 – Gravesend Town Centre Opportunity Area
- CS07 – Economy, Employment and Skills
- CS11 - Transport
- CS12 – Green Infrastructure
- CS14 – Housing Type and Size
- CS18 – Climate Change
- CS19 - Development & Design Principles
- CS20 – Heritage and the Historic Environment

Gravesham Local Plan: First Review (1994)

- P3 – Vehicle Parking Standards
- H5 – Increasing the Housing Stock by the Conversion of Existing Buildings
- TC2 – Listed Buildings
- TC3 – Development Affecting Conservation Areas
- TC7 – Other Archaeological Sites

Paragraph 33 of the NPPF (2023) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2023), the Council will also seek to replace these.

Other material considerations

Under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended, the Council has a statutory duty in considering whether to grant planning permission for development which affects a listed building or its setting to have special regard to the desirability of preserving the building or its setting or any features of special architect or historic interest which it possesses.

Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended, states that with respect to buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

National Planning Policy Framework (2023)

- 2 – Achieving Sustainable Development

- 4 – Decision-making
- 6 – Delivering a sufficient supply of homes
- 7 – Ensuring the vitality of town centres
- 8 – Promoting healthy and safe communities
- 9 – Promoting sustainable transport
- 12 – Achieving well-designed and beautiful places
- 15 – Conserving and enhancing the natural environment
- 16 – Conserving and enhancing the historic environment

Supplementary Planning Guidance

- 2 - Residential layout guidelines including Housing Standards Policy Statement October 2015 Adopted 1996 – amended June 2020;
- Technical Housing Standards – nationally described space standard (2015);
- SPG 4 - KCC Parking Standards (2006);
- King Street Conservation Area Character Appraisal (2009)
- Management Plan Gravesend Town Centre Conservation Areas (2009)

Consultations, Publicity and Representations

Consultees

GBC Conservation Officer

Having reviewed the latest proposals, these appear to have addressed the main concerns raised in the previous application 20231004.

One error I noticed in the drawings is between the existing and proposed side elevation where the hatched area increases on the proposed elevation. I don't think this is intended as the existing and proposed plans do not appear to have changed the exterior of the proposals; unless you can see otherwise I assume it's a drawing error.

I note that the Noise Assessment Report assumes the first floor is of concrete plank construction (Page 28), which is surprising for a grade II listed building where timber floor construction would be expected. This may need checking on site and if it is established not to be as assumed then further proposals may be required by the Environmental Health team for this separating floor.

Assuming the proposals are approved there will need to be conditions for further details in respect of ventilation, partitions and internal joinery, doors, architraves etc.

GBC Environmental Protection

Following earlier (refused) applications, noise and air quality assessments have been submitted with this application. These have been reviewed alongside the revised plans and details and the following comments are made:

Air Quality:

The contents of the 'Air Quality Assessment' dated 30th January 2024 by NoiseAir (Report Ref P70222-R1-V1) are noted. The methodology and findings of the report are accepted. The assessment looks at the impact of the development on the AQMA within which the property is located both during the construction and operational phases and also considers the impact the air quality in the area will have on future occupants.

In terms of construction phase, with appropriate mitigation during the conversion works, there should be no impact on the AQMA. A Dust Management Plan has been recommended and suggested details of this are provided in the report. This is agreed with. As the development is 'car free', there will be no impact on the

AQMA once the development is completed.

The impact of introducing new residential receptors into an area of known poor air quality has also been assessed. Reference has been made to a nearby diffusion tube and results over recent years have declined here so are likely to be below the Air Quality Objective for NO₂. In this respect, no specific mitigation measures for air quality are therefore needed, although mechanical ventilation, as an alternative to opening windows, is still recommended in order to achieve a better standard of living/amenity.

The assessment also looks at the impact on air quality as a result of the construction and recommend a dust management plan. This can be addressed by way of a condition requiring a comprehensive Construction Environmental Management Plan.

Noise:

The methodology of the 'Noise Assessment for Planning dated' 31st January 2024 by inacoustic is accepted. The assessment looks at noise sources in the area and also the sound insulation between the existing floor/ceiling partition between the commercial use on the ground floor as the proposed flats above. Appropriate noise measurements have been undertaken and reference has been made to the relevant standards and criteria.

With respect to external noise sources (road traffic and other plant/equipment in the area), a BS4142 assessment was undertaken which resulted in a +7dB excess over background noise levels – this is considered to amount to an adverse impact. This affects both the front and the rear of the building. Mitigation is therefore needed to reduce this impact and the report recognises that this cannot be achieved with windows being open for ventilation purposes, so an alternative form of ventilation is needed. Table 12 on page 25 of the report provides the minimum glazing specification (a mix of secondary glazing and double glazing depending on the façade) and mechanical ventilation (MVHR) required to achieve appropriate internal noise levels as required by BS8233:2014.

From Environmental Protection's perspective, the noise assessment demonstrates that with the appropriate mitigation, suitable internal noise levels can be achieved. However, a detailed design for both is recommended in order to ensure that the specification meets the Conservation Officer's requirements for this building in terms of the external facades and also any internal alterations. It's noted that a proposed glazing drawing using secondary glazing has been submitted.

Although a plan titled 'MVHR Detail' has been submitted, this is unclear as it refers to Unit Studios 1 and 2 and is an elevation drawing. Not all rooms are shown and there is no information as to the type of MVHR system to be installed. The specification of the MVHR system will need to demonstrate that there is no detrimental increase in internal noise levels as a result of its installation. It is advised that the air intakes are from the rear of the building to ensure that clear air is brought in. Environmental Protection can provide an MVHR checklist to the applicant which will be helpful in designing a suitable system. Again, although this matter can be addressed by way of a condition from our perspective, the Conservation Officer will no doubt want to assess the layout etc.

With regards to the sound insulation between the ground and 1st floors, we have previously requested that the standard in the Building Regulations Documents E is improved by +10dB. Table 16 on page 29 proposes the separating floor construction and which will achieve the required sound insulation. This is based on an upgrade to the existing floor construction by infilling with 60mm Rockwood (Min 10kg/m³). The assessment does indicate that should the floor/ceiling construction be found to differ, then this design may need to be altered.

To address the above and other matters, the following conditions and informatives are recommended.

Noise:

No dwelling shall be occupied until a post completion noise survey has been undertaken by a suitably

qualified acoustic consultant, and a report submitted to and approved in writing by the Local Planning Authority. The post completion testing shall assess performance of the noise mitigation measures in accordance with 'Noise Assessment for Planning dated' 31st January 2024 by InAcoustic (The Report). If the noise levels set out in The Report are exceeded, additional noise mitigation measures to ensure the appropriate noise levels can be met shall be submitted to and approved in writing by the Local Authority and implemented in full prior to the first occupation.

The final approved sound insulation scheme shall be implemented and maintained in accordance with the approved plans thereafter.

The Post Completion report shall assess the performance of any ventilation and cooling/heating system that has been installed to the satisfaction of the local authority. The approved alternative means of ventilation and cooling/heating shall be maintained thereafter.

Mechanical Ventilation Heat Recovery system (MVHR)

Full details of the MVHR system to be installed, to include full layout plans, technical specification etc, must be submitted for approval prior to any occupation of the dwellings. The scheme must include the following:

- a heat exchange unit,
- noise attenuation
- location of air intakes, flues and all ducting
- the air intakes must be sited away from all pollution sources e.g. traffic fumes, flues, soil and vent pipes and must not bring in odour from any commercial extraction system.

The applicant will be provided with the checklist of points that must be considered and included in the scheme and which must be adequately demonstrated to the LPA by the submission of required information, plans, commitments etc. in order for the scheme to be approved.

The approved scheme must be installed, before occupation. The installed scheme must be commissioned, before occupation, by an independent ventilation engineer to ascertain if the flow rates are correct and that it is fit for purpose i.e. that it fulfils its purpose of positively pressurising the residential units so that pollution cannot enter from the roadside or any other sources and is not drawn into the property through the air system.

Code of Practice on Construction and Demolition:

Please apply to prevent nuisance from noise and dust during the conversion and construction occurring to nearby premises.

Smoke Control Informative:

The proposed development is situated in a smoke control area. As such, only authorised smokeless fuels as listed in the Smoke Control Areas (Authorised Fuels) Regulations 1991 shall be burnt or fireplaces/appliances exempted by Smoke Control (Exempted Fireplaces) Orders shall be utilised. Exempt appliances are appliances (ovens including pizza and tandoori ovens, wood burners and stoves) which have been exempted by Statutory Instruments (Orders) under the Clean Air Act 1993. These have passed tests to confirm that they are capable of burning an unauthorised or inherently smoky solid fuel without emitting smoke. They must be fitted and used according to manufacturer's instructions and they can only be used for the fuel for which they are designed. When purchasing fuels and fireplaces the applicant should clarify with the vendor their suitability with respect to use in Smoke Control Areas. For further information, including confirmation that an appliance and/or fuel is suitable for use in a smoke control area, the applicant should contact the Council's Regulatory Services air.quality@gravesham.gov.uk

Drainage/sewerage informative:

The foul sewage shall be removed by means of the mains drainage system and not by the use of non-mains sewerage systems, unless connection to the drainage system is not reasonably practicable.

Asbestos informative:

Owing to the likelihood of the existing building containing asbestos products, the applicant should be informed to contact the Health and Safety Executive (HSE) for advice on the submission of a suitable method statement for removal. Any asbestos found on site must be removed in a controlled manner by an appropriately qualified operator. This is in the interests of safeguarding the amenities of the surrounding area and safety.

Neighbouring properties

24 surrounding properties were consulted plus site and press notices – overall consultation expiry date was 22.03.2024 – one response received in objection the comments of which can be summarised as follows:

There is no parking proposed, the nearest street with on street parking is Edwin Street which is already challenging to park. Potential of 7 additional vehicles will only add to this problem.

Officer's Analysis

The application site consists of a three storey building situated on the southern side of Milton Road opposite the junction with Berkley Road. The building has two commercial units at ground floor and the first and second floors have a lawful use as a restaurant although this is currently vacant.

The building is grade II listed, located in the King Street Conservation Area, the A226 One Way System, Gravesend Air Quality Management Area (AQMA), the Thames Estuary And Marshes Ramsar Buffer Zone, the Gravesend Town Centre Opportunity Area and in an Area of Archaeological Potential.

This application is a re-submission of previous refused applications most recently being planning application reference 20231004 which was for conversion of the property from a vacant restaurant to 3x1 bed flats and 3 studio flats and was refused on 5 December 2023 on the following grounds:

1. The proposal would result in the loss of historic fabric with the removal of some chimney stacks, there is a lack of information on the ventilation extraction required for kitchens and bathrooms to assess the impact on the fabric of the listed building and insufficient information has been submitted to demonstrate the impact of the proposal on the fabric of the listed building from works that would be required under the Building Regulations and to mitigate poor air quality and noise impacts; such information is needed in order to assess the impact of those works on this listed building and the King Street Conservation Area. On the basis of the submitted information the proposal would therefore be harmful to the significance and architectural and historic interest of this grade II listed building contrary to Policies CS19 and CS20 of the Gravesham Local Plan Core Strategy (2014), saved Policies TC2 and TC3 of the Gravesham Local Plan First Review (1994) and section 16 of the National Planning Policy Framework (2023).

2. The proposal would result in extremely poor living conditions for future occupiers by virtue of two of the flats being undersized, rooms in two of the flats receiving poor natural sunlight, daylight and outlook and insufficient information has been submitted to demonstrate that future occupiers would be protected from poor air quality and noise and disturbance. The proposal is therefore contrary to Policy CS19 of the Gravesham Local Plan Core Strategy (2014) and paragraph 130 (f) of the National Planning Policy Framework (2023).

3. The applicant has failed to provide any ecological evidence to inform a habitat regulations assessment to address the impact of the proposed development on the Thames Estuary and Marshes Ramsar site and Special Protection Area (SPA) or offered a financial contribution towards the identified mitigation measures to address the impact of the development on the SPA/Ramsar site. The proposal is therefore contrary to Policy CS12 of the Gravesham Local Plan Core Strategy (2014) which seeks to ensure that detrimental effects on the integrity of SPA/Ramsar sites are avoided, and also contrary to Paragraphs 180 and 181 of

the National Planning Policy Framework (2023).

It therefore needs to be seen in this latest application whether these grounds of refusal have been resolved and also whether all other matters are acceptable or not.

It should be noted that there is no accompanying Listed Building Consent application.

Housing Need

In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865, Lord Carnwath reemphasised that the National Planning Policy Framework is only a material consideration in planning decisions and that that planning applications should be determined in accordance with the development plan. Paragraph 12 of the NPPF expressly states that the starting point for decision-making is the development plan. Lord Carnwath as part of the Supreme Court decision stated,

“It is important, however, in assessing the effect of the Framework, not to overstate the scope of this policy-making role. The Framework itself makes clear that as respects the determination of planning applications (by contrast with plan-making in which it has statutory recognition), it is no more than “guidance” and as such a “material consideration” for the purposes of section 70(2) of the 1990 Act... It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.”

It is a matter of law that all planning applications need to be considered in accordance with the legislation and relevant policy that applies at the point a decision is taken. The Council published a revised 5 year housing land supply statement in March 2023, it demonstrates that based on data up for the period 2022-2027, the Council can only demonstrate a land supply of 2.9 years.

Given the Council’s current inability to demonstrate a 5-year housing land supply, and as the delivery of housing was substantially below (less than 75%) that required by the Housing Delivery Test, the housing delivery element of Gravesham’s Local Plan Core Strategy (LPCS) (2014) Policy CS02 must be regarded to be out of date, as required by the Paragraph 11(d) of the National Planning Policy Framework (NPPF) (2023). This requires that in regard to housing development, planning permission should be granted unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

In the Gravesham context, the policies referred to in paragraph 11(d)(i) above are those set out in the NPPF at footnote 7 (rather than those in development plans) relating to any of the following:

- Habitats sites (and those sites listed in NPPF paragraph 188)
- Sites of Special Scientific Interest
- Green Belt
- Local Green Space
- Areas of Outstanding Natural Beauty
- Irreplaceable habitats
- Designated heritage assets (& other heritage assets of archaeological interest, see NPPF footnote 68)
- Areas at risk of flooding or coastal change.

In determining applications for planning permission involving housing, the Council will therefore apply a weighted balance in favour of granting planning permission in accordance with relevant case law and guidance, having regard to the acceptability or otherwise of the proposals when evaluated against development plan policy, the need to make efficient use of land (paragraph 129(c)) in context, the relative contribution the proposal makes towards the alleviation of any shortfall in housing delivery at that time and

any other considerations material to the proposed development.

The proposed development for a net increase of 3 residential units would offer a modest contribution towards meeting this local need and, accordingly, officers consider that this should be accorded appropriate weight in support of the application. However, this has to be balanced against other requirements of the Development Plan and NPPF (2023) which requires new development to contribute positively to the overall quality of the area, be visually attractive, sympathetic to local character and create a high standard of amenity for existing and future occupiers.

Principle of Development

The site is within the urban boundary of Gravesend which is covered by Policy CS02 (LPCS) which prioritises development in the urban area as a sustainable location for development. Policy CS05 (LPCS) states that the Gravesend Town Centre Opportunity Area will be the principal focus for town centre related economic and social activity in the Borough and that this will be achieved by, amongst other things, encouraging a mix of employment and residential uses. It is stated that the provision of residential uses on upper floors will be supported subject to achieving a satisfactory living environment.

In summary therefore, it is considered that there is support for the principle of the development but all of the principle considerations will need to be looked at to assess whether it is acceptable in regard to them as well.

Whether the proposal would protect the architectural and historic interest of this grade II listed building and preserve or enhance the character and appearance of the King Street Conservation Area

This matter related to ground of refusal no. 1 of previous application ref. 20231004.

The application building is grade II listed and situated in the King Street Conservation Area.

In application ref. 20231004 there had been an improvement on the previous refused applications as there was a detailed Heritage Statement and less sub-division of the rooms however, there were still elements of the proposal that were not acceptable in heritage terms. This related to the removal of chimney breasts and a lack of information on the works that would be required to the building under Building Regulations or to mitigate noise impact or poor air quality. As this is a listed building those details were required at application stage in order to assess the impact on the listed building and Conservation Area; in the absence of those details it could not be assessed what impact the proposal would have had on those.

In this new current application there have been changes and additional information. It is noted that the number of proposed units has been reduced from six to four and that this generally follows the existing layout but where there is sub-division this would only take place in either the more modern rear extension part of the building and two of the existing rooms in the original part of the building (the stores) but which the Conservation Officer had advised in previous application ref. 20231004 was acceptable.

In this current application there has also now been information submitted in respect of noise and air quality assessments and details of the works required under the Building Regulations.

The works required under the Building Regulations involve the following:

- Two black powder coated vents in rear elevation to serve two adjacent kitchens;
- Moving the doorway between the two halves of flat 1, repositioning it to a proposed entrance corridor between the bathroom and living room due to Part B (Fire Safety) – the Heritage Statement advises that this is considered to be low level less than substantial harm and that whilst opening up a section of historic wall this matches the existing second floor layout and is off-set by the sealing of the adjacent also non-original opening.
- Sealing the doorway/corridor between flat 1 and flat 3 and the stairwell at the centre of the property to the first and second floors respectively.

The Air Quality Assessment finds that no specific mitigation measures are needed (GBC Environmental Protection advise that nitrogen dioxide levels have been declining at the nearest diffusion tube over recent years so are likely to be below the Air Quality Objective for NO₂) although the Assessment still states that mechanical ventilation as an alternative to opening windows is recommended in order to achieve a better standard of living/amenity.

The Noise Assessment finds that with regards external noise sources there would be a +7dB excess over background noise levels which GBC Environmental Protection advises amounts to an adverse impact and which would affect both the front and rear of the building. The report recognises that mitigation is therefore needed and that this cannot be achieved by windows being open for ventilation purposes so an alternative form of ventilation is needed. The report advises of minimum glazing specification (a mix of secondary glazing and double glazing depending on the façade) and mechanical ventilation (MVHR) that is required to achieve appropriate internal noise levels as required by BS8233:2014. GBC Environmental Protection advise that this would be acceptable with them as the Noise Assessment demonstrates that with the appropriate mitigation, suitable noise levels can be achieved and advise of conditions for full details of an MVHR system and a post completion noise survey.

Submitted with the application is a proposed secondary glazing drawing and an MVHR detail drawing although as GBC Environmental Protection advises this appears to be unclear, not all rooms are shown and there is no information on the type of MVHR system to be installed.

The Heritage Statement makes no mention of the proposed mitigation measures for noise and air quality.

The Conservation Officer has viewed the proposals and advises that these appear to have addressed the concerns raised in previous application ref. 20241004 and if approved there will need to be conditions for further details in respect of ventilation, partitions and internal joinery, doors, architraves etc.

In order to ensure that future occupiers would not be impacted on by unacceptable noise levels mitigation is required in the form of an MVHR system and secondary glazing. The Conservation Officer has not raised any specific concerns to this and advises that conditions will be required of details of these matters. It is therefore considered that it would be acceptable to condition those matters to ensure there would be no harm caused to the listed building or the Conservation Area.

In summary, on the basis of the current proposal where the chimney breasts are no longer proposed to be removed and details of the works required under the Building Regulations and for air quality and noise mitigation have now been submitted it is considered that the proposal would be acceptable subject to conditions. Although works are proposed to the building the Conservation Officer raises no objections and subject to conditions it is considered that such works would protect the architectural and historic interest of this listed building and the character and appearance of the King Street Conservation Area. As such in respect of heritage matters the proposal subject to conditions is considered compliant with Policies CS19 & CS20 (LPCS), saved Policies TC2 & TC3 (LPFR), sections 12 & 16 of the NPPF (2023) and ground of refusal no. 1 of application ref 20231004 has been resolved.

Amenity of Future Occupiers

This matter related to ground of refusal no. 2 of previous application ref. 20231004.

The issues were that two of the flats were undersized and two of the flats would have experienced poor sunlight, daylight and outlook and therefore very poor living conditions harmful to their amenity. Furthermore, no details had been submitted to demonstrate that future occupiers would not be impacted on from poor air quality and noise.

Flat sizes

In this proposal the number of flats has been reduced from six to four and the sizes are as follows:

Flat no.	Internal floorspace (sq.m)	THS minimum standard for the type of accommodation (sq.m)	Does it meet the THS minimum standard?
1 (2 bed, 3 person, 1 storey)	73.6	61	Y
2 (1 bed, 2 person, 1 storey)	50	50	Y
3 (2 bed, 3 person, 1 storey)	72.9	61	Y
4 (2 bed, 3 person, 2 storey)	87.3	70	Y

All four flats would now therefore exceed the minimum standards as set out in the Technical Housing Standards (2015).

Layout/Light/Outlook

In the previous application ref. 202301004 some of the flats would have had very poor levels of amenity in terms of layout and sunlight/daylight and outlook. The issues were as follows with a note as to whether this issue has been resolved or not:

Flat 1 – Kitchen would have only one window looking out into the void area so would receive very poor sunlight/daylight and outlook – This issue has been resolved as the proposed kitchen would no longer be in the room it was previously proposed to be in but would now be in the main front roof as part of the open plan living, kitchen and dining room. This room is served by two windows in the front elevation and would therefore receive good levels of natural light and ventilation.

Flat 4 – As above for flat 1 and therefore this issue is resolved.

Flat 6 – The bedroom would have only one window looking out into the void area so would receive very poor sunlight/daylight and outlook. The kitchen/living/dining room would have no windows so would receive no sunlight/daylight or outlook – This issue has been resolved as flat no. 6 is no longer proposed as the proposal is now only for four flats.

Air Quality & Noise Impact

The site falls within the A226 One Way System AQMA and is on the A226 one way system. In previous application ref. 20231004 Environmental Protection advised that as per their comments on the previous refused applications an Air Quality Assessment is needed in order to assess the impact on future occupiers of the flats from the poor air quality and determine what mitigation would be needed to protect future occupiers. Also that a Noise Impact Assessment is needed in order to determine the noise impact given that the site is situated on the A226 which is on the town's one way system, in the town centre close to a number of late-night establishments and with commercial premises underneath at ground floor, and determine what mitigation would be needed. No such reports had been submitted and so it could not be assessed that future occupiers would not be impacted on by poor air quality and noise.

In this current application as discussed in the heritage section above, an Air Quality Assessment and a

Noise Assessment have been submitted.

The Air Quality Assessment finds that no specific mitigation measures are needed (GBC Environmental Protection advise that nitrogen dioxide levels have been declining at the nearest diffusion tube over the recent years so are likely to be below the Air Quality Objective for NO₂) although the report still states that mechanical ventilation as an alternative to opening windows is recommended in order to achieve a better standard of living/amenity.

The Noise Assessment finds that with regards external noise sources there would be a +7dB excess over background noise levels which GBC Environmental Protection advises amounts to an adverse impact and which would affect both the front and rear of the building. The report recognises that mitigation is therefore needed and that this cannot be achieved by windows being open for ventilation purposes so an alternative form of ventilation is needed. The report advises of minimum glazing specification (a mix of secondary glazing and double glazing depending on the façade) and mechanical ventilation (MVHR) that is required to achieve appropriate internal noise levels as required by BS8233:2014. GBC Environmental Protection advise that this would be acceptable with them as the Noise Assessment demonstrates that with the appropriate mitigation, suitable noise levels can be achieved and advise of conditions for a post completion noise survey and full details of an MVHR system.

Submitted with the application is a proposed secondary glazing drawing and an MVHR detail drawing although as GBC Environmental Protection advise, this is unclear, not all rooms are shown and there is no information on the type of MVHR system to be installed.

Therefore, subject to conditions as advised by Environmental Protection for an MVHR system and post completion noise survey there could be appropriate mitigation to ensure that future occupiers would not be harmed by the unacceptable noise levels that the noise survey identifies and such a system would also address the poor air quality.

In respect of the amenity of occupiers therefore as the number of flats has been reduced from six to four, the internal proposed arrangements have been revised, the size and natural light and ventilation levels would be acceptable and noise and air quality surveys have been submitted, it is considered that the proposal subject to conditions would provide an acceptable level of amenity and living conditions for future occupiers of the flats and the proposal in respect of occupier amenity is compliant with Policy CS19 (LPCS) and paragraph 135(f) of the NPPF (2023). In this regard ground of refusal no. 2 of previous application ref. 20231004 has been resolved.

Neighbouring Amenity

There are no external alterations or extensions proposed to the building therefore no impact on neighbouring amenity and in this regard the proposal would be compliant with Policy CS19 (LPCS).

Impact on Ecology/Biodiversity

This matter related to ground of refusal no. 3 of previous application ref. 20231004 as the applicant had not paid the required SAMMS tariff.

The application site falls within 6km of the Thames Estuary and Marshes Special Protection Area (SPA) classified in accordance with the European Birds Directive which requires Member States to classify sites that are important for bird species listed on Annex 1 of the European Directive, which are rare and/or vulnerable in a European context, and also sites that form a critically important network for birds on migration. It is also listed as a Wetland of International Importance under the Ramsar Convention (Ramsar Site). Studies have shown marked declines in key bird species, particularly in areas that are busiest with recreational activity. Research conducted in 2011 found that additional dwellings were likely to result in additional recreational activity, causing disturbance to protected bird species that over-winter or breed on the SPA and Ramsar Site. The studies found that 75% of recreational visitors to the North Kent coast originate from within 6 km of the SPA boundary and Ramsar Site. The impacts of recreational disturbance

can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European Sites.

The Borough Council has mitigated out the impacts of this on each and every planning application for a new residential development of one or more units within the 6km zone since September 2015 by accepting a Strategic Access Mitigation and Monitoring Strategy (SAMMS) (tariff) payment (currently £328.27 per dwelling). This approach is approved by Natural England for all new residential developments.

For every planning application for a new dwelling (including new flats) which does not require any other contributions to be secured through a s106 legal agreement or unilateral undertaking the tariff has been secured through a contribution agreement.

The tariff has been accepted effectively in lieu of an Appropriate Assessment (AA) under the Habitat Regulations and thus avoiding the need to progress into a full AA.

However, a more recent Court of Justice European Union (CJEU) ruling means that this approach is now no longer valid and although the mitigation measures (in the form of a tariff payment) will still need to be made the first stage will be a screening assessment as to whether the development either alone or in combination, is likely to have significant effects on a designated site without mitigation. The CJEU sees a distinction between “the plan or project” itself and “measures intended to avoid or reduce the harmful effects of a plan or project on a European site”. This means that mitigation measures, which are intended to avoid or reduce effects, should be assessed within the framework of an AA and cannot be taken into account at the screening stage.

This proposal would result in the net addition of three units and the applicant has paid the required tariff (£328.27 x 3 = £984.81). The Local Planning Authority can therefore be satisfied that the proposal has put in place adequate measures to mitigate potential significant adverse effects on the Thames Estuary and Marshes SPA/Ramsar site. Therefore, the proposal in respect of ecology and biodiversity is compliant to Policy CS12 (LPCS) and Paragraphs 187 and 188 of the NPPF (2023). In this regard ground of refusal no. 3 of previous application ref. 20231004 has been resolved.

Parking and Highway Safety

The application site has no off-street parking and this would remain the case with the proposal. The existing use of the application building is two commercial (Class E) units at ground floor with a vacant restaurant at first floor level. The site is located in the town centre close to a public car park and public transport links. Overall, therefore it is considered the proposal would not have any impact with regards parking and highway safety and as such the proposal is in accordance with Policy CS11 (LPCS).

Refuse

There were no details of refuse storage provided in the application originally. The proposal relates to the upper floors of the building which was previously the Peking restaurant. The main entrance to access the upper floors leads down onto Milton Road and directly onto the pavement and the building is landlocked to the sides and rear so there is no possibility of providing refuse storage outside of the building. GBC Waste recommended that there is sufficient bin storage in each flat for a week's worth of refuse, recycling and food and then GBC Waste will collect this each week on a specified day. The agent has amended the plans to show sufficient bin storage in each flat. As such it is considered that there would be sufficient refuse storage provision for the proposed flats and in regard to refuse the proposal is therefore compliant with Policy CS19 (LPCS).

Conclusion & Recommendation

The proposal is now considered acceptable subject to conditions in respect of protecting the architectural and historic interest of this listed building and the character and appearance of the King Street Conservation Area which would be preserved. It is also subject to conditions now considered acceptable in

respect of the amenity of future occupiers and would now adequately mitigate potential significant effects on the Thames Estuary and Marshes SPA/Ramsar site. The proposal remains acceptable as before in respect of neighbouring amenity, parking and highway safety.

Recommendation: Permission

(For detailed conditions and informatives, see draft Decision)

Case Officer:	Ms Rebecca Harrison	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	8 th July 2024	Dated:	09 July 2024